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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/719,607
Filing Date: November 21, 2003
Appellant(s): VAN TRUMP, JAMES EDMOND

Christina W. Geerlof
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 02 July 2007 appealing from the Office action mailed on 19 September 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-8.

Claim 9 has been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

The summary of claimed subject matter is directed to sole independent claim 1.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: The rejection of claims 1, 2 and 4-8 under 35 USC §102(b) as being anticipated by Ochi et al (EP 1059372 A2), the rejection of claims 1, 2 and 4-8 under 35 USC §102(e) as being anticipated by Chang et al (U.S. Patent Application Publication 2002/0025433 A1) and the rejection of claims 1, 2 and 4-8 under 35 USC §102(e) as being anticipated by Koyanagi et al (U.S. Patent Application Publication 2003/0052436 A1) are all withdrawn.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 1, 2 and 4-8 under 35 USC §102(b) as being anticipated by Ochi et al (EP 1059372 A2), the rejection of claims 1, 2 and 4-8 under 35 USC §102(e) as being anticipated by Chang et al (U.S. Patent Application Publication 2002/0025433 A1) and the rejection of claims 1, 2 and 4-8 under 35 USC §102(e) as being anticipated by Koyanagi et al (U.S. Patent Application Publication 2003/0052436 A1).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2002/0025433 A1	CHANG et al	02-2002
US 2003/0052436 A1	KOYANAGI et al	03-2003
EP 1059372 A2	OCHI et al	12-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koyanagi et al (U.S. Patent Application Publication 2003/0052436 A1).

Koyanagi et al (see the entire document, in particular, paragraphs [0045], [0105] - [0107], [0112], [0120], [0197],

[0297], [0319], [0325] and [0341]) teaches a process of making polyester bicomponent fibers having latent crimp including the steps of combining at least two crystallizable polyester polymers (differing from one another in crystallization rate), melting the polyester polymers, flowing the molten polyester polymers through a spinneret (suitable for making bicomponent fibers) having one or more apertures and spinning at least one strand of polyester bicomponent fiber (having a denier within the claimed range). Koyanagi et al does not explicitly teach determining a maximum shrinkage spinning rate (or MSSR) of the polyester polymers (which is defined as that spinning speed at which the fiber so produced exhibits a higher degree of latent shrinkage (i.e., latent crimp) than fiber produced at spinning speeds which differ by at least +/- 10% from the MSSR; page 2, line 36 to page 4, line 4 of the instant specification). However, this would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Koyanagi et al principally because Koyanagi et al, just like the instantly-claimed process, is directed to making polyester bicomponent fibers having latent crimp and Koyanagi et al spins the polyester polymer materials at a spinning speed which produces polyester bicomponent fibers having a desired amount of latent crimp. Polypropylene terephthalate (or PPT) polymer would

have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Koyanagi et al principally because Koyanagi et al teaches polyester polymers in general and terephthalate-type polymers in particular, and also to manufacture polyester bicomponent fibers having a desired amount of latent crimp.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ochi et al (EP 1059372 A2).

Ochi et al (see the entire document, in particular, the abstract; paragraphs [0001], [0009], [0025], [0026], [0032] - [0034] and [0043]) teaches a process of making polyester bicomponent fibers having latent crimp including the steps of combining at least two crystallizable polyester polymers (differing from one another in crystallization rate), melting the polyester polymers, flowing the molten polyester polymers through a spinneret (suitable for making bicomponent fibers) having one or more apertures and spinning at least one strand of polyester bicomponent fiber (having a denier within the claimed range). Ochi et al does not explicitly teach determining a maximum shrinkage spinning rate (or MSSR) of the polyester polymers (which is defined as that spinning speed at which the fiber so produced exhibits a higher degree of latent shrinkage (i.e., latent crimp) than fiber produced at spinning speeds

which differ by at least +/- 10% from the MSSR; page 2, line 36 to page 4, line 4 of the instant specification). However, this would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Ochi et al principally because Ochi et al, just like the instantly-claimed process, is directed to making polyester bicomponent fibers having latent crimp and Ochi et al spins the polyester polymer materials at a spinning speed which produces polyester bicomponent fibers having a desired amount of latent crimp. Polypropylene terephthalate (or PPT) polymer would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Ochi et al principally because Ochi et al teaches polyester polymers in general and terephthalate-type polymers in particular, and also to manufacture polyester bicomponent fibers having a desired amount of latent crimp.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al (U.S. Patent Application Publication 2002/0025433 A1).

Chang et al (see the entire document, in particular, paragraphs [0003], [0005], [0008] - [0026], [0037], [0044], [0049] and [0053]) teaches a process of making polyester bicomponent fibers having latent crimp including the steps of

combining at least two crystallizable polyester polymers (differing from one another in crystallization rate), melting the polyester polymers, flowing the molten polyester polymers through a spinneret (suitable for making bicomponent fibers) having one or more apertures and spinning at least one strand of polyester bicomponent fiber (having a denier within the claimed range). Chang et al does not explicitly teach determining a maximum shrinkage spinning rate (or MSSR) of the polyester polymers (which is defined as that spinning speed at which the fiber so produced exhibits a higher degree of latent shrinkage (i.e., latent crimp) than fiber produced at spinning speeds which differ by at least +/- 10% from the MSSR; page 2, line 36 to page 4, line 4 of the instant specification). However, this would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Chang et al principally because Chang et al, just like the instantly-claimed process, is directed to making polyester bicomponent fibers having latent crimp and Chang et al spins the polyester polymer materials at a spinning speed which produces polyester bicomponent fibers having a desired amount of latent crimp. Polypropylene terephthalate (or PPT) polymer would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Chang et al principally

because Chang et al teaches polyester polymers in general and terephthalate-type polymers in particular, and also to manufacture polyester bicomponent fibers having a desired amount of latent crimp.

(10) Response to Argument

Appellant argues (page 6) that neither Koyanagi et al, Ochi et al nor Chang et al (alone or in combination) render the claimed subject matter obvious because none of these cited references (alone or in combination) disclose, suggest or teach a method for determining the maximum shrinkage spinning rate (or MSSR). Examiner responds that the instant claims do not recite a method for determining MSSR, but rather recite a step of determining MSSR. Each one of the cited references is directed to a process of making polyester bicomponent fibers having latent crimp, which is what the instantly-claimed process is directed to. Each one of the cited references spins the polyester polymer materials at a spinning rate which provides for fibers having a desired amount of latent crimp. In order to manufacture fibers having a desired amount of latent crimp, each one of the cited references teaches certain spinning rates, which spinning rates were determined by the authors of each one of the cited references. Koyanagi et al teaches a spinning rate of preferably no greater than 2000 meters/minute (paragraph

[0197]), Ochi et al teaches a spinning rate of at least 1200 meters/minute (abstract; paragraph [0009]) and Chang et al. teaches a spinning rate of 700 - 3500 meters/minute (paragraph [0044]) (note that these spinning rates are comparable to those set forth by appellant in the examples on page 13, lines 1-2, 7-8 and 13-14 of the instant specification). Since each one of the cited references is directed to making polyester bicomponent fibers having latent crimp, each one of the cited references spins polyester polymer materials at a spinning rate to achieve a desired amount of latent crimp and each one of the references teaches spinning rates (determined by the authors of the references) for spinning polyester polymer materials, the determination of MSSR would have been obvious to one of ordinary skill in the art at the time the invention was made in each one of the cited references in order to manufacture polyester bicomponent fibers having a desired amount of latent crimp.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Leo B. Tentoni

Leo B. Tentoni Primary Examiner GAU 1732

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